

SOUTH AFRICA / JUDGMENT

Raphephele v Road Accident Fund (6140/21) [2025] ZAGPPHC 364 (10 April 2025) [2025] ZAGPPHC 364

COURT

North Gauteng High Court, Pretoria

BEFORE

Mfenyana

CASE / FILE NUMBER

6140/21

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IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO: 6140/21

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

DATE 10/04/2025

SIGNATURE

In the matter

between:-

MAFAHLA

JOHN RAPHEPHELE

Plaintiff

and

THE

ROAD ACCIDENT FUND

Defendant

Coram: Mfenyana
J
This
judgment was handed down electronically by circulation to the
parties' representatives via email. The date and time for
hand-down is deemed to be 10 April 2025 at 14h00.

JUDGMENT

Mfenyana J

[1] The plaintiff, Mafahla John Raphephele (Raphephele) instituted proceedings against the defendant, seeking damages for bodily injuries he sustained, allegedly in a motor vehicle accident which

occurred on 4 August 2019. It is alleged that at the time the accident occurred, the plaintiff was a pedestrian. Although the Road Accident Fund (RAF) filed a notice of intention to defend and a plea, it did not meaningfully defend the matter, and did not file any expert reports.

[2] The matter proceeded on both merits and quantum. At the commencement of the proceedings, I made an order for the evidence of the plaintiff's experts to be given on affidavit in terms of rule

38(2), following a substantive application by the plaintiff.

[3] In the particulars of claim dated 11 November 2020, it is asserted

that on 5 August 2019 at approximately 18h30, the plaintiff was a pedestrian walking along Njala Street in Tembisa, when he was hit by a motor vehicle with unknown registration letters and numbers, driven by an unknown driver. It is further stated that as a result of the accident, the plaintiff sustained injuries to his right ankle, specifically a right lateral bimalleolar fracture and various soft tissue injuries. He received treatment as a result of the injuries he sustained. He claims damages in the amount of R1 300 000.00 for pecuniary and non-pecuniary loss.

[4] In the amended POC dated 26 November 2024 the plaintiff states that the accident occurred on 4 August 2019. There was no objection to the amendment and the amendment was consequently, effected.

[5] In respect of merits, the plaintiff filed two affidavits in terms of section 19(f) of the RAF Act. [1] The first affidavit was deposed to on 30 October 2019. In it, the plaintiff asserts that on 5 August 2019 he "was involved in a pedestrian motor vehicle accident" while walking along Njala Street in Tembisa. He further asserts that he was hit by a Toyota Avanza bearing unknown registration numbers and letters, driven at the time, by an unknown driver. According to the plaintiff he was walking on the pavement with his back towards oncoming traffic, and the insured vehicle came from behind him and veered out of the road onto the

pavement and collided with him. The insured driver thereafter fled the scene. He states that after the accident he was taken to Tembisa hospital where he received treatment. It is further the plaintiff's assertion that one witness known to him as Wonder witnessed the accident.

[6] The second affidavit was deposed to on 25 May 2022. In this affidavit the plaintiff states that on 4 August 2019 at approximately 18h30 he was involved in a "pedestrian motor vehicle accident" while walking on the pavement along Njala Street in Tembisa with his friend, Ngoako Thomas Modiba (Modiba), also known as Wonder. They were walking home from a soccer match when the accident occurred. He goes further to state that the 4th of August 2019 was a Sunday, and that he first went home and went to hospital the next day.

[7] The plaintiff's affidavit further records that the plaintiff

reported the accident at the police station after he was discharged from hospital in September 2019, and because it was already

September, he erroneously indicated the date of the accident as 5 September 2019 instead of August 2019. Further, as the accident

occurred on 4 August and not 5 August, the plaintiff further requests that this should also be corrected. No explanation is provided for this discrepancy, save to state that the accident happened on 4 August 2019, and the plaintiff was admitted to hospital on 5 August 2019.

[8] In the accident report, it is recorded that the accident occurred on 5 September 2019.

[9] The hospital records indicate that the plaintiff was admitted to Tembisa hospital on 5 August 2019 at 19h55. At the top of the document, it is also recorded- Time 15:10, presumably the time he was first attended to. The time of accident is reflected as 9:09. It is further reflected that the plaintiff arrived at the hospital in a wheelchair. In his testimony, he stated that he was taken to hospital by ambulance. Notably, under section 2 of the clinical records, it is recorded that the plaintiff twisted his foot.

[10] In a separate progress note, also forming part of the clinical notes recorded on 06 August 2019, it is indicated that "(the plaintiff) fell into a ditch and busted his right ankle".

[11] At the hearing of the matter, the plaintiff testified. In his testimony, and in a bid to clarify the discrepancies in his two affidavits, he reiterated that the accident occurred on 4 August

2019. That is as far as he could take the matter. Modiba also deposed to an affidavit, and was also called testify on behalf of the plaintiff. He testified that he was walking home with the plaintiff on 4 August 2019 coming from a soccer match. He was on the left-hand side of John walking on Njala Street when a white Toyota Avanza coming from a side street on their right lost control and collided with the plaintiff on the sidewalk. The driver of the motor vehicle fled the scene. When asked what happened to the plaintiff thereafter, and how he got home, Modiba stated that he left him at his house. When he went to check on him the next day, he could not find him. It turned out that he had been admitted to

hospital.

- [12] It is evident from the above that the applicant's claim is not borne out by evidence. To the contrary, independent documentation before this court points to a different cause of the plaintiff's injuries, namely that the plaintiff had fallen into a ditch and twisted his ankle. No mention is made at all of a motor vehicle accident in the clinical records.
- [13] It appears that as time progressed, the story also developed. It took a different turn. With each document filed, a new detail emerged. The upshot of this is that, ultimately, the court is faced with multiple versions, all of which are mutually exclusive, presumably emanating from the same incident. This cannot be. Even if this court were to accept that the incident occurred on 4 August 2019, and not on 5 August 2019, the cause of the plaintiff's injuries remains

unexplained. The plaintiff could not give an explanation why the hospital and medical staff on more than one occasion did not record that he had been in a motor vehicle accident. The plaintiff's evidence is not in sync with his case and vice versa. In all probability, he was not a reliable witness. Even in court, his evidence was not reliable. As the plaintiff in the matter, the details of his claim ought to be within his knowledge. His evidence is also not corroborated by independent information, save for his friend's evidence who cannot be regarded as an independent witness at any rate. In any event, Modiba could not shed any light on events that occurred after he had parted with the plaintiff. From his evidence, the plaintiff managed to walk home. Looked at in conjunction with the hospital records that the plaintiff only attended at hospital in the afternoon of 5 August 2019, his account is improbable. It is improbable that the plaintiff could simply walk himself home despite the injuries he sustained and only seek medical attention in the late afternoon the next day.

- [14] There is a plethora of cases in this division and beyond, which spell out that, a plaintiff will not be granted the relief they seek, merely on the basis that the defendant has not mounted a defence or a meaningfully defended the matter. This has always been the position, and it still prevails. In *Nelson v Marich*[2] the erstwhile Appellate Division observed that:

"The fact that there was no evidence to contradict the evidence given by the plaintiff does not mean that the court is bound to accept the defendant's evidence... ." A plaintiff is still required to make out a proper case for the relief it seeks.

- [15] This court in *T[...] P[...] R[...] obo P[...]M[...] M[...] v Road Accident Fund*[3], per Davis J, where the defendant's defence had been struck out, noted with approval that 'the plaintiff remains with the onus to prove its case on a balance of probabilities'. In the present case, the defendant remains very much a part of the case, despite not having appointed experts. There can therefore be no doubt that in circumstances like in the present case, this trite principle of our law is all the more relevant.
- [16] The plaintiff in this case failed to discharge the onus that rests on him, to prove his case on a preponderance of probabilities. The plaintiff's claim on the merits thus, falls to be

dismissed.

[17] Having found that the plaintiff has made no case on the merits, it is not necessary to deal with the issue of quantum.

[18] In respect of costs, it is trite that costs are pre-eminently within the discretion of the court. Although it is a general rule is that costs follow the result, I am of the view that in the circumstances of this matter, it would serve no purpose to grant a cost order that would likely not be satisfied.

[19] In the result, I make the following order:

- a. The plaintiff's claim is dismissed.
- b. Each party shall pay its own costs.

S MFENYANA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

APPEARANCES

For the applicant : M Pienaar instructed by Snyman Lotz Inc. gsmit@snymanlotz.co.za
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simonma@raf.co.za Date reserved

: 26 November 2024 Date of judgment : 10 April 2025

[1] Act 56 of 1996.

[2] 1952

(3) SA 140 (A).

[3] Case No. 9117/2019 (18 April 2024).

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